

Receipt Number

540758

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISIONCONTINENTAL MARKETING SERVICES, LTD.,  
a foreign corporation,

Case No.

Plaintiff,

v.  
THE BURKE GROUP,  
d/b/a BUR-CAM PUMPS USA, INC.,  
a foreign corporation,Case: 2:06-cv-11614  
Assigned To: Hood, Denise Page  
Referral Judge: Majzoub, Mona K  
Filed: 04-04-2006 At 02:33 PM  
CMP CONTINENTAL MARKETING SERVICES  
, INC V THE BURKE GROUP, ET AL (TAM)

Defendant.

**THE MANUFACTURER'S REPRESENTATIVE  
LAW CENTER, PLLC**Thomas R. Warnicke (P47148)  
Zachary B. Mack (P62742)  
Attorneys for Plaintiff  
1701 Cass Lake Road  
Keego Harbor, MI 48320  
(248) 738-5000**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Continental Marketing Services, Ltd., by and through its attorneys, THE MANUFACTURER'S REPRESENTATIVE LAW CENTER, PLLC, complains against Defendant as follows:

**Jurisdictional Allegations**

1. Plaintiff, CONTINENTAL MARKETING SERVICES, LTD., is a corporation incorporated in under the laws of the State of Illinois, with its principal place of

business in Westchester, Illinois. At all times pertinent hereto, Plaintiff has done business as a manufacturer's sales and service representative throughout the Midwest, including in the State of Michigan.

2. Defendant, THE BURKE GROUP, a/k/a BUR-CAM PUMPS USA, INC., is a foreign corporation, with its principal place of business in Laval, Quebec, Canada. At all times pertinent hereto, Defendant has engaged in the business of manufacturing, distributing and/or selling various products throughout the United States, including the State of Michigan.
3. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332. Jurisdiction is based upon diversity.

#### General Allegations

4. In 2002, Plaintiff and Defendant entered into a business agreement wherein Plaintiff was to serve as Defendant's sales representative.
5. In consideration of Plaintiff's efforts under the agreement, Defendant agreed to pay Plaintiff a commission on all sales Plaintiff generated in its assigned territory.
6. Plaintiff successfully generated sales of Defendant's products in the assigned territory, which included the State of Michigan.
7. During the last part of 2004, Defendant informed Plaintiff that it was terminating the parties' agreement.
8. At the time of termination, Plaintiff had generated sales in its assigned territory from which it was entitled to commissions, including the State of Michigan.
9. The sales Plaintiff generated before its termination resulted in the realization of substantial payments for Defendant after Plaintiff's termination.

10. Defendant has not paid Plaintiff the agreed upon commission for all sales Plaintiff had generated in its assigned territory, including the State of Michigan.

**COUNT I – BREACH OF CONTRACT**

11. Plaintiff re-alleges the above paragraphs.

12. Defendant breached the parties' agreement by failing to pay Plaintiff all of the commissions that were due and owing to it before termination and/or post-termination commissions that have since become due and are owed to it.

13. As a result of Defendant's breaches, Plaintiff has incurred substantial damages via its unpaid commissions, in an amount in excess of \$75,000.00, exclusive of interest and costs.

WHEREFORE, Plaintiff demands judgment against Defendant in whatever amount in excess of \$75,000.00 it is found to be entitled, together with costs, interest and attorney fees so wrongfully incurred.

**COUNT II - VIOLATION OF MCL 600.2961**

**THE MICHIGAN SALES REPRESENTATIVE COMMISSION ACT**

14. Plaintiff re-alleges the above paragraphs.

15. Pursuant to MCL 600.2961(1)(d) of the Michigan Sales Representative Commission Act (hereinafter referred to as the "Act"):

(d) "Principal" means a person that does either of the following:

(i) Manufactures, produces, imports, sells or distributes a product in this state.

(ii) Contracts with a sales representative to solicit orders for or sell a product in this state."

16. Defendant manufactures, produces, imports, sells or distributes a product in the State of Michigan.
17. Defendant is principal within the meaning of the Act.
18. Pursuant to Section 1(e) of the Act:

“(e) ‘Sales representative’ means a person who contracts with or is employed by a principal for the solicitation of orders or sale of goods and is paid, in whole or in part, by commission. Sales representative does not include a person who places an order or sale for a product on his or her own account for re-sale by that sales representative.”
19. Plaintiff contracted with Defendant for the solicitation of orders or sale of goods, and was paid, in whole or in part, by commission.
20. Plaintiff is a sales representative within the meaning of the Act.
21. Pursuant to Section 4 of the Act:

“(4) All commissions that are due at the time of termination of a contract between a sales representative and principal shall be paid within 45 days after the date of termination. Commissions that become due after the termination date shall be paid within 45 days after the date on which the commission became due.”
22. Commissions were due to Plaintiff at the time of termination that have not been paid within 45 days after termination.
23. Further, commissions have become due after termination that have not been paid within 45 days after the date on which they were due.
24. Pursuant to Section 5 of the Act:

“(5) A principal who fails to comply with this section is liable to the sales representative for both of the following:

- (a) Actual damages caused by the failure to pay the commissions when due.
- (b) If the principal is found to have intentionally failed to pay the commission when due, an amount equal to 2 times the amount of commissions due but not paid as required by this section or \$100,000.00, whichever is less.”

25. Defendant has intentionally failed to pay commissions within the time periods set by MCL 600.2961.
26. As a proximate result of Defendant's violations of the Act, Plaintiff has incurred monetary damages.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$75,000.00, or whatever different amount to which Plaintiff is found to be entitled, together with statutory penalties, costs, interest and attorney fees so wrongfully incurred.

### **COUNT III – PROCURING CAUSE DOCTRINE**

27. Plaintiff re-alleges the above paragraphs.
28. In the alternative, if no express agreement is found to have existed between Plaintiff and Defendant as to commissions to which Plaintiff would be entitled to in the event of termination, Plaintiff's entitlement to post-termination commissions is governed by the Procuring Cause Doctrine.
29. Under the Procuring Cause Doctrine, Plaintiff is entitled to commissions on all sales of Defendant's products to accounts generated as a result of Plaintiff's

efforts during the course of representing Defendant, even if the sales take place after the termination of the parties' agreement.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$75,000.00, or whatever different amount to which Plaintiff is found to be entitled, together with costs, interest and attorney fees so wrongfully incurred. Plaintiff also demands judgment against Defendant declaring that Defendant shall pay Plaintiff a commission on all sales of Defendant's products for which Plaintiff was the procuring cause.

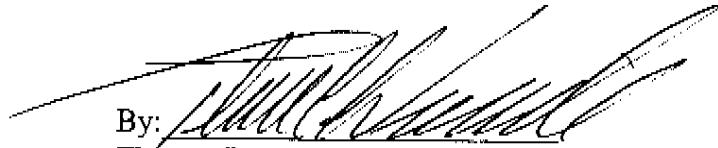
**COUNT IV – UNJUST ENRICHMENT**

30. Plaintiff re-alleges the above paragraphs.
31. Defendant has received significant financial benefits through its wrongful acts stated herein, and Plaintiff has lost its financial expectations.
32. Defendant has no valid legal or equitable claim to the financial benefits it has derived from its wrongful acts.
33. It would be inequitable for Defendant to retain such benefits.
34. Defendant has been unjustly enriched at Plaintiff's expense.

WHEREFORE, Plaintiff is entitled to an award equal to the amount of Defendant's unjust enrichment so as to divest the inequitable benefits from Defendant and return them to its rightful owner.

Respectfully submitted,

**THE MANUFACTURER'S REPRESENTATIVE  
LAW CENTER, PLLC**

By:   
Thomas R. Warnicke (P47148)  
Zachary B. Mack (P62742)  
Attorneys for Plaintiff  
1701 Cass Lake Road  
Keego Harbor, MI 48320  
(248) 738-5000

**JURY DEMAND**

Plaintiff hereby demands a jury trial of this matter.

Respectfully submitted,

**THE MANUFACTURER'S REPRESENTATIVE  
LAW CENTER, PLLC**

By:   
Thomas R. Warnicke (P47148)  
Zachary B. Mack (P62742)  
Attorneys for Plaintiff  
1701 Cass Lake Road  
Keego Harbor, MI 48320  
248-738-5000

**CIVIL COVER SHEET** County in which this action arose Oakland

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> Continental Marketing Services, Ltd.		<b>DEFENDANTS</b> The Burke Group, d/b/a Bur-Cam Pumps USA, Inc.	
<b>(b) County of Residence of First Listed Plaintiff</b> <u>Cook</u> (EXCEPT IN U.S. PLAINTIFF CASES) Thomas R. Warnicke (P47148) <i>BS/BS</i> Man. Rep. Law Center, PLLC (c) Attorney's (Firm Name, Address, and Telephone Number) 1701 Cass Lake Road (248) 738-5000		County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)	
<b>II. BASIS OF JURISDICTION</b> (Select One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Select One Box for Plaintiff and One Box for Defendant)	
<input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 2 U.S. Government Defendant		<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) <i>5/31</i>	
		Citizen of This State <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 4
		Citizen of Another State <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 4	Foreign Nation <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 6
<b>IV. NATURE OF SUIT</b> (Select One Box Only)			
<b>CONTRACT</b>		<b>TORTS</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 160 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<b>PERSONAL INJURY</b>	
		<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	
<b>REAL PROPERTY</b>		<b>PERSONAL PROPERTY</b>	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 411 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	
		<b>PRISONER PETITIONS</b>	
		<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	
<b>V. ORIGIN</b> <input checked="" type="checkbox"/> 1 Original Proceeding		(Select One Box Only) <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (Specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	
<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <i>28 U.S.C. 133</i> Brief description of cause: <i>Unpaid Sales Commission Dispute</i>	
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> <i>75,000+</i> CHECK YES only if demanded in complaint: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>VIII. RELATED CASE(S) IF ANY</b> (See instructions): <i>JUDGE</i>		<b>DOCKET NUMBER</b>	
DATE <i>April 4, 2006</i>		SIGNATURE OF ATTORNEY OF RECORD <i>Thomas R. Warnicke</i>	
FOR OFFICE USE ONLY			
RECEIPT # <i>RECEIPT #</i>		AMOUNT <i>AMOUNT</i>	
		APPLYING JPF <i>APPLYING JPF</i>	
		JUDGE <i>JUDGE</i>	
		MAG. JUDGE <i>MAG. JUDGE</i>	

## PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

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